



Ninety-Ninth Legislature - First Session - 2005
Introducer's Statement of Intent
LB 152

Chairperson: Patrick J. Bourne
Committee: Judiciary
Date of Hearing: February 10, 2005

The following constitutes the reasons for this bill and the purposes which are sought to be accomplished thereby:

Under both the Nebraska Political Subdivisions Tort Claims Act (Neb. Rev. Stat. §13-911) and the State Tort Claims Act (Neb. Rev. Stat. §81-8,215.01), any public entity employing a law enforcement officer whose actions during a vehicular pursuit are the proximate cause of death, injury, or property damage suffered by an “innocent third party” is strictly liable for, and must pay for, those damages irrespective of any fault or negligence on the part of that officer. Nowhere in these statutes is the term “innocent third party” defined. This lack of statutory definition has been addressed by the Nebraska Supreme Court, most notably in its decision in Henery v. City of Omaha, 263 Neb. 700, 641 N.W.2d 644 (2002), leading the Court to adopt a judicial definition. According to that judicial definition, an “innocent third party” under §13-911 is “one who has not promoted, provoked, or persuaded the driver to engage in flight from law enforcement personnel and one who is not sought to be apprehended in the fleeing vehicle.”

In addition to codifying this definition in statute, LB 152 builds upon it by recognizing that there are other circumstances when a passenger in a fleeing vehicle should not be considered an “innocent third party.” Such circumstances would include a passenger who: 1) Is under the influence of alcohol or drugs; 2) enters the vehicle knowing, or with the reasonable belief, that the driver of the vehicle is under the influence of alcohol or drugs; 3) fails to take reasonable steps to persuade the driver to stop the vehicle; or 4) is engaged in any illegal activity which would itself give rise to an arrest.

Principal Introducer: _____
Senator Carol Hudkins